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16 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

17 REGION 9

18 In The Matter of: )  
 19 )  
 20 SOUTHERN PACIFIC LAND COMPANY )  
 21 )  
 22 RESPONDENT )  
 23 )  
 24 Proceeding Under Section 106(a) of )  
 25 the Comprehensive Environmental )  
 26 Response, Compensation and )  
 Liability Act of 1980 )  
 (42 U.S.C. § 9606(a)) )

Docket No. 87-02

21 ADMINISTRATIVE ORDER  
 22 ON CONSENT  
 23  
 24  
 25  
 26

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1  
2 I. AUTHORITY

3 A. This Consent Order is issued pursuant to the authority  
4 vested in the President of the United States by Section 106(a)  
5 of the Comprehensive Environmental Response, Compensation, and  
6 Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601 et seq., as  
7 amended by the Superfund Amendments and Reauthorization Act of  
8 1986 ("SARA"), Pub. L. No. 99-497, 100 Stat. 1613 (1986), and  
9 delegated to the Administrator of the United States  
10 Environmental Protection Agency ("EPA" or "Agency") on  
11 January 23, 1987, by Executive Order 2580, 52 Fed. Reg. 2923,  
12 and further delegated to the Assistant Administrator for Solid  
13 Waste and Emergency Response and the Regional Administrators by  
14 EPA Delegation Nos. 14-14-8A and 14-14-C. This authority has  
15 been redelegated to the Director, Toxics & Waste Management  
16 Division, EPA, Region 9.

17 B. Southern Pacific Land Company ("SPLC" or "Respondent")  
18 agrees to undertake all actions required by the terms and  
19 conditions of this Consent Order in a cost effective manner in  
20 accordance with the provisions of CERCLA and the National  
21 Contingency Plan, 40 C.F.R. Part 300 et seq., as amended.

22 C. Respondent consents to and does not contest EPA  
23 jurisdiction for entry and enforcement of this Consent Order  
24 and agrees that it will not contest EPA's authority to enter  
25 into or enforce this Order.

26 / / /

/ / /



1 project schedule and a list of reports, documents, and other  
2 deliverables that SPLC will provide for EPA review, comment  
3 and/or approval.

4 B. To conduct the Feasibility Study ("FS") described  
5 in the RI/FS Work Plan, as Amended, for evaluating remedial  
6 action alternatives which may be appropriate to prevent,  
7 mitigate and/or eliminate the release or threatened release of  
8 hazardous substances, pollutants, or contaminants at or from  
9 the Site.

10 C. To conduct, in addition to the RI/FS for the  
11 Coalinga Site, an offsite source characterization/regional soil  
12 sampling and watershed modelling report to be used in any study  
13 undertaken by EPA to address asbestos-containing materials from  
14 both natural and anthropic sources in the region of the  
15 Coalinga Site generally.

16 D. To undertake all actions required by the terms and  
17 conditions of this Consent Order in a cost effective manner as  
18 approved by EPA and in accordance with the provisions of CERCLA  
19 and the National Contingency Plan (NCP), 40 C.F.R. Part 300.61  
20 et seq., as amended.

### 21 III. SITE BACKGROUND

22 A. SPLC owns the Coalinga Asbestos Mill Superfund  
23 Site located approximately 17 miles northwest of Coalinga,  
24 Fresno County, California, in Section 1, Township 19 South,  
25 Range 13 East. The Site covers approximately 557 acres of land  
26 owned by SPLC. The Site is located within the Pine Canyon

1 Creek drainage basin, which ultimately drains into the Los  
2 Gatos Creek below the confluence of White and Los Gatos  
3 Creeks. The Site is located immediately adjacent to the New  
4 Idria Formation and ranges in elevation from 2800 to 3000 feet.

5 B. Respondent acquired the Site property from the  
6 federal government as part of a land grant under the 1871  
7 Railway Act. The Johns-Manville Company, which leased the  
8 property beginning in the early 1960's, developed mill  
9 facilities at the Site and mine operations on adjacent land as  
10 the Coalinga Asbestos Company. Marmac Resource Company /  
11 Maraco purchased the mill facilities and equipment from  
12 Johns-Manville in the mid-1970's and managed the mill for  
13 approximately one year, ceasing milling operations shortly  
14 thereafter.

15 C. The major features of the Coalinga Site include  
16 an asbestos mill and process waste tailings. The tailings may  
17 represent a major source of chrysotile asbestos fibers in the  
18 Pine Canyon Creek drainage. Tailings materials entering Pine  
19 Canyon Creek may eventually enter the Arroyo Pasajero via Los  
20 Gatos Creek. Other substances possibly found at the Site  
21 include chromium wastes as well as other naturally occurring  
22 substances, including arsenic, magnesium and mercury.

23 D. The Coalinga Site may contribute to a regional  
24 asbestos contamination problem. The regional problem will be  
25 addressed by EPA in a separate study to be conducted at a later  
26 time. This Order's provisions regarding the scope of the work

1 required in the Coalinga RI/FS (Work to be Performed and  
2 Additional Work - Article VI) and EPA's enforcement mechanisms,  
3 including stipulated penalties (Article XII), have been limited  
4 because of the special circumstances of the possible regional  
5 asbestos contamination problem.

#### 6 IV. CONCLUSIONS OF LAW

7 A. The Site is a "facility" as defined in Section  
8 101(9) of CERCLA, 42 U.S.C. § 9601(9).

9 B. SPLC is a "person" as defined in Section 101(21)  
10 of CERCLA, 42 U.S.C. § 9601(21).

11 C. Wastes, including asbestos, and their  
12 constituents at the Site are "hazardous substances" as defined  
13 in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

14 D. The past, present, and potential migration of  
15 hazardous substances from the Site constitutes an actual or  
16 threatened "release" as defined in Section 101(22) of CERCLA,  
17 42 U.S.C. § 9601(22).

18 E. SPLC is a potentially responsible party pursuant  
19 to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

#### 20 V. DETERMINATIONS

21 Based on the facts presented in the Background, and  
22 the Conclusions of Law set out above, EPA has determined that:

23 A. The actual and/or threatened release of hazardous  
24 substances from the Site may present an imminent and  
25 substantial endangerment to the public health or welfare or the  
26 environment.



1           B. The actions required under this Consent Order are  
2 necessary to protect the public health, welfare and the  
3 environment and are consistent with CERCLA and the NCP.

4           C. SPLC has demonstrated that it is qualified to  
5 conduct the RI/FS and that it is able to perform the technical  
6 procedures set forth in EPA's Remedial Investigation and  
7 Feasibility Study guidances.

8                   VI. WORK TO BE PERFORMED

9           All response work performed pursuant to this Consent  
10 Order shall be under the direction and supervision of a  
11 qualified professional engineer or a certified geologist with  
12 expertise in hazardous waste site response work. Prior to  
13 initiation of work under this Consent Order, SPLC shall notify  
14 EPA in writing of the name, title, and qualifications of such  
15 engineer or geologist and a list of any contractors and/or  
16 subcontractors to be used in carrying out the terms of this  
17 Consent Order.

18           Based on the foregoing it is hereby AGREED TO AND  
19 ORDERED that the following work shall be performed by SPLC and  
20 EPA, in accordance with the requirements set out below and the  
21 RI/FS Workplan, as Amended:

22                   A. RI/FS Work Plan Tasks and Deliverables:

23           SPLC shall perform the tasks and submit reports  
24 contained in the RI/FS Work Plan, as Amended. This work shall  
25 be consistent with all applicable requirements of the NCP and  
26 shall be conducted in accordance with EPA RI/FS guidances

1 ("Guidance on Remedial Investigations Under CERCLA," June,  
2 1985; and "Guidance on Feasibility Studies Under CERCLA," June,  
3 1985), to the extent applicable as determined by EPA, and with  
4 the standards, specifications and schedule contained in the  
5 approved RI/FS Work Plan, as Amended. The RI/FS Work Plan, as  
6 Amended, is not subject to Dispute Resolution (Article XII)  
7 procedures.

8 B. Deliverables to be submitted are listed below.

9 This listing includes the type of review that EPA will conduct  
10 (either "Review and Comment" or "Review and Approve"). Each  
11 deliverable must include the items described in the RI/FS Work  
12 Plan, as Amended. These specifics are meant as a framework for  
13 each deliverable's content. Open discussions between SPLC and  
14 EPA will be necessary to assure that deliverables contain  
15 sufficient detail. Any reports, plans, specifications,  
16 schedules, and attachments required by this Consent Order are,  
17 upon approval by EPA, incorporated into this Consent Order.  
18 Subject to the provisions of Article XII (Dispute Resolution),  
19 any non-compliance with such EPA approved reports, plans,  
20 specifications, schedules, and attachments, unless otherwise  
21 excused by EPA in writing, shall be considered a failure to  
22 achieve the requirements of this Consent Order and will subject  
23 SPLC to the provisions included in the "Stipulated Penalties"  
24 Article (Article XIII) of this Consent Order.

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Required deliverables and EPA action on review are as follows:

1. Monthly Progress Reports
  - EPA review and comment
2. Soil Sampling Plan
  - Draft: EPA review and comment
  - Final: EPA review and approve
3. Site Health and Safety Plan
  - EPA review and comment
4. Quality Assurance Project Plan
  - Draft: EPA review and comment
  - Final: EPA review and approve
5. Water Sampling Report
  - Draft: EPA review and comment
  - Final: EPA review and approve
6. Remedial Investigation ("RI") Report
  - Preliminary Draft: EPA review and comment
  - Draft: EPA review and comment
  - Final: EPA review and approve
7. Preliminary Remedial Alternatives Report
  - Draft: EPA review and comment
  - Final: EPA review and approve
8. Initial Screening Report
  - Draft: EPA review and comment
  - Revised draft: EPA review and comment

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- 1           9.   Feasibility Study ("FS") Report
- 2               -   Preliminary Draft:   EPA review and comment
- 3               -   Draft:   EPA review and comment
- 4               -   Final:   EPA review and approve
- 5           10. Off-site Source Characterization/Regional Soil
- 6               Sampling and Watershed Modelling Report
- 7               -   Draft:   EPA review and comment
- 8               -   Final:   EPA review and approve
- 9           C.   EPA Review and Approval of Deliverables
- 10           1.   EPA shall review, comment, and if appropriate,
- 11   approve or disapprove each report, document or other
- 12   deliverable required to be submitted by SPLC pursuant to this
- 13   Article.   EPA shall provide SPLC with written comments on
- 14   SPLC's preliminary draft and draft Remedial Investigation (RI)
- 15   Report (Deliverable 6) within 22 and 28 days, respectively, of
- 16   receipt of those submittals.   EPA shall provide SPLC with
- 17   written comments on SPLC's preliminary draft and draft
- 18   Feasibility Study (FS) Report (Deliverable 9) within 28 and 40
- 19   days, respectively, of receipt of those submittals.   EPA shall
- 20   provide SPLC with written approval or disapproval of SPLC's
- 21   final RI Report and final FS Report, within 42 and 45 days,
- 22   respectively, after receipt of these submittals.   EPA shall
- 23   provide SPLC with written comments on all other draft
- 24   deliverables required pursuant to this Article, and written
- 25   approval or disapproval of all other final deliverables
- 26   / / /

1 required pursuant to this Article, within 21 days after receipt  
2 of these submittals, respectively, by EPA.

3 2. SPLC shall submit its draft RI and FS Report  
4 within 51 and 35 days, respectively, of receipt of EPA's  
5 comments on the preliminary draft RI and FS Reports. Within 30  
6 days of SPLC's receipt of EPA comments on drafts of  
7 deliverables for which EPA approval is required pursuant to  
8 this Article, SPLC shall submit its final deliverables. Final  
9 deliverables shall after discussion with EPA officials  
10 incorporate final EPA comments.

11 3. SPLC may begin dispute resolution procedures, if  
12 appropriate, after it receives EPA's approval or disapproval of  
13 the final deliverable. In the event of any EPA disapproval,  
14 EPA shall specify in writing as part of its disapproval both  
15 the deficiencies and the reasons for such disapproval.

16 4. SPLC's deadlines will be extended for an amount of  
17 time equal to any extra time needed by EPA beyond the time  
18 specified above to review, comment on, approve or disapprove  
19 the above deliverables.

20 5. In accordance with the RI/FS Work Plan, as  
21 Amended, EPA will prepare an Air Sampling Report and Public  
22 Health Evaluation Report ("PHE Report") which are required  
23 deliverables as part of the RI/FS for the Coalinga Site. EPA  
24 will involve SPLC in the preparation of these reports by  
25 providing SPLC with drafts of the Air Sampling Report and PHE  
26 Report for SPLC's comments. To be considered by EPA, SPLC must

1 submit its comments on the draft Air Sampling Report and PHE  
2 Report within two weeks after receipt. After consideration of  
3 SPLC's comments, EPA shall issue a final approved Air Sampling  
4 Report and final approved PHE Report. EPA shall respond to  
5 SPLC's comments in writing. Issuance of EPA's draft and final  
6 approved Air Sampling Report and PHE Report, and submission of  
7 SPLC's comments on the draft documents, shall be in accordance  
8 with the schedule set forth in the RI/FS Work Plan, as  
9 Amended. SPLC's deadlines for completion of work required  
10 under this Article will be extended for an amount equal to any  
11 extra time needed by EPA beyond the time provided in the  
12 schedule included in the RI/FS Work Plan, as Amended, to  
13 complete the Air Sampling Report and PHE Report.

14 D. Submittals

15 Documents, including progress and technical reports,  
16 approvals, disapprovals, and other correspondence to be  
17 submitted pursuant to this Consent Order, shall be sent by  
18 overnight mail (unless other means will get the document to the  
19 addressee by the time required) to the following addressees or  
20 to such other addressees as the parties hereafter may designate  
21 and shall be deemed submitted on the date received by EPA or  
22 SPLC.

23 1. Documents to be submitted to EPA shall be sent to:

24 Ms. Jennifer Decker (T-4-3) (4 copies)  
25 Toxics & Waste Management Division  
26 U.S. EPA, Region 9  
215 Fremont Street  
San Francisco, California 94105  
Phone Number: (415) 974-8161

1 Additional copies shall be sent to:

2 Mr. Scott Huntsman (1 copy)  
3 Woodward-Clyde Consultants  
4 100 Pringle Avenue, Suite 300  
5 Walnut Creek, California 94596-3564  
6 Phone Number: (415) 945-3000

7 2. Documents to be submitted to SPLC shall be sent to:

8 Mr. W. William Ehri (1 copy)  
9 Vice President, Property Management Services  
10 Southern Pacific Land Company  
11 201 Mission Street, 30th Floor  
12 San Francisco, California 94105  
13 Phone Number: (415) 974-4503

14 Additional copies shall be sent to:

15 Larry W. Telford, Esq. (1 copy)  
16 Santa Fe Southern Pacific Corporation  
17 201 Mission Street, 30th Floor  
18 San Francisco, California 94105  
19 Phone Number: (415) 974-4687

20 Edward L. Strohbehn, Jr., Esq. (1 copy)  
21 McCutchen, Doyle, Brown & Enersen  
22 Three Embarcadero Center  
23 San Francisco, California 94111  
24 Phone Number: (415) 393-2000

25 Mr. James D. Levine (2 copies)  
26 Levine & Fricke, Inc.  
627 Oakland Avenue  
Oakland, California 94611  
Phone Number: (415) 652-4500

E. EPA may determine that additional work, including remedial investigatory work, engineering evaluation, and interim response measures, is necessary as part of the RI/FS and/or the offsite source characterization/regional soil sampling and watershed modelling report (Deliverable 10). Such determination shall include discussions with SPLC prior to the determination. Such additional work shall be cost effective

1 and consistent with the NCP. Subject to the provisions of  
2 Paragraph F and Article XII (Dispute Resolution) of this  
3 Consent Order, SPLC shall implement any additional work which  
4 EPA determines is necessary as part of the RI/FS and/or the  
5 offsite source characterization/regional soil sampling and  
6 watershed modelling report ("Additional Work"). The Additional  
7 Work shall be completed in accordance with the standards,  
8 specifications, requirements and schedules determined or  
9 approved by EPA. The time deadline for performance of any  
10 activity dependent on Additional Work will be extended by EPA  
11 for an amount of time equal to that required to perform the  
12 Additional Work unless the dependent activity can be  
13 implemented in a shorter time.

14 F. SPLC shall be required to implement Additional  
15 Work pursuant to Article VI(E) of this Consent Order only upon  
16 a written determination by EPA that: (1) the Additional Work is  
17 necessary as part of the RI/FS; (2) the Additional Work does  
18 not duplicate work that has been or is to be undertaken as part  
19 of the remedial investigation/feasibility study for the Atlas  
20 Mine Superfund Site; and (3) the Additional Work may be  
21 conducted entirely on SPLC property located in Section 1,  
22 Township 19 South, Range 13 East or within a geographic area  
23 downgradient of the Site along the streambeds of the Pine  
24 Canyon, White and Los Gatos creeks and the Arroyo Pasajero to,  
25 but not including, the San Luis Canal, as necessary to complete  
26 the offsite source characterization/regional soil sampling and



1 watershed modelling report (Deliverable 10). SPLC shall not  
2 incur stipulated penalties pursuant to Article XIII of this  
3 Consent Order with respect to any failure by SPLC to implement  
4 Additional Work for which EPA does not provide a written  
5 determination in accordance with this paragraph.

6 VII. DESIGNATED PROJECT COORDINATORS

7 A. On or before the effective date of this Consent  
8 Order, EPA shall designate a Project Coordinator who shall have  
9 the authorities, duties, and responsibilities vested in the  
10 Remedial Project Manager by the National Contingency Plan.  
11 SPLC shall also designate a Project Coordinator. Both Project  
12 Coordinators shall be responsible for overseeing technical  
13 implementation of this Consent Order. The EPA Project  
14 Coordinator will be EPA's designated representative at the  
15 Site. To the maximum extent possible, all oral communications  
16 between SPLC and EPA concerning the activities performed  
17 pursuant to this Order shall be directed through the Project  
18 Coordinators. All documents, including progress and technical  
19 reports, approvals, and other correspondence concerning the  
20 activities performed pursuant to the terms and conditions of  
21 this Consent Order, shall be delivered in accordance with  
22 Article VI(D) above.

23 B. EPA and SPLC each have the right to change their  
24 respective Project Coordinators. Such a change shall be  
25 accomplished by notifying the other party in writing at least  
26 one week prior to the change except in the case of emergency,

1 in which case notification shall be made orally followed by  
2 written notification as soon as possible.

3 C. Consistent with the provisions of this Consent  
4 Order, the EPA Project Coordinator shall also have the  
5 authority vested in the On-Scene-Coordinator ("OSC") by the  
6 National Contingency Plan, unless EPA designates a separate  
7 individual as OSC, who shall then have such authority.

8 D. The absence of the EPA Project Coordinator or OSC  
9 from the Site shall not be cause for the stoppage of work.

10 VIII. QUALITY ASSURANCE

11 SPLC shall use quality assurance, quality control, and  
12 chain of custody procedures in accordance with the Quality  
13 Assurance Project Plan approved by EPA as part of the RI/FS  
14 Work Plan, as Amended.

15 IX. SITE ACCESS

16 To the extent that SPLC requires access to land other  
17 than land it owns, SPLC will use its best efforts to obtain  
18 access for itself, its contractors and agents, EPA, and its  
19 contractors and agents, from the present owners or lessees as  
20 the need for such access may arise. In the event that SPLC is  
21 not able to obtain site access to property owned or controlled  
22 by persons or entities other than SPLC, SPLC shall notify EPA  
23 promptly regarding both the lack of, and efforts to obtain,  
24 such access.

25 / / /

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1           X. SAMPLING, ACCESS, AND DATA/DOCUMENT AVAILABILITY

2           A. SPLC shall provide EPA with the results of all  
3     sampling and/or test or other technical data generated by SPLC  
4     or on SPLC's behalf with regard to soil, ground water, surface  
5     water, or air contamination by hazardous substances,  
6     pollutants, or contamination at the Site. Details and  
7     documentation of all sampling and data collection completed  
8     during the previous month shall be presented in a monthly  
9     report.

10          B. At the request of EPA, SPLC shall provide split or  
11     duplicate samples to EPA and/or its authorized representative  
12     of any samples collected by SPLC as part of the RI/FS Work  
13     Plan, as Amended. SPLC shall notify EPA of any planned sample  
14     collection activity in the preceding monthly report. SPLC  
15     shall notify EPA of any other sampling that it performs not  
16     less than 48 hours in advance of the sampling activity. EPA  
17     shall provide to SPLC all results from its analysis of split or  
18     duplicate samples. EPA shall allow split and/or duplicate  
19     samples to be taken by SPLC of any samples collected by EPA or  
20     its contractors during the performance of the RI/FS Work Plan,  
21     as Amended, and shall notify SPLC no less than 48 hours in  
22     advance of any sample collection activity.

23          C. SPLC shall permit EPA and/or its authorized  
24     representative to have access at reasonable times to the Site  
25     to monitor any activity conducted pursuant to the RI/FS Work  
26     Plan, as Amended, or to inspect and obtain samples as EPA deems

1 necessary, and EPA shall permit SPLC to observe such EPA  
2 monitoring, tests or investigations. EPA shall complete any  
3 such monitoring, test or investigation with reasonable  
4 promptness. EPA representatives shall comply with the Site  
5 Health and Safety Plan and all other security and health and  
6 safety requirements normally in effect at the facility.

7 D. SPLC shall permit EPA and/or its authorized  
8 representative to inspect and copy all records, documents, and  
9 other writings, including all sampling and/or test or other  
10 technical data, that in any way concern soil, ground water,  
11 surface water or air contamination at the Site, except items  
12 protected by the attorney/client privilege or the work product  
13 doctrine, unless waived as provided in Paragraph (E) below.  
14 Except as provided in Paragraph (E) below, SPLC reserves and  
15 does not waive the right to assert whatever privilege,  
16 including without limitation the privileges protecting the work  
17 product of attorneys and attorney/client communications, it may  
18 claim with respect to those or any other documents or  
19 communications.

20 E. Except as provided below, SPLC may assert a  
21 confidentiality claim covering part or all of the information  
22 requested by this Consent Order pursuant to 40 C.F.R.  
23 § 2.203(b). Information determined to be confidential by EPA  
24 will be afforded the protection specified in 40 C.F.R. Part 2,  
25 Subpart B. If no such claim accompanies the information when  
26 it is submitted to EPA, it may be made available to the public

1 by EPA without further notice to SPLC. SPLC shall not assert a  
2 confidentiality claim or a claim of privilege as attorney work  
3 product or attorney/client communications with respect to any  
4 sampling and/or test or other technical data generated by SPLC  
5 or on SPLC's behalf that in any way concern soil, groundwater,  
6 surface water or air contamination at the Site.

7 F. Upon request by SPLC, EPA shall, consistent with  
8 the principles of the Freedom of Information Act, furnish SPLC  
9 with copies of all records, documents, and other writings,  
10 including all sampling and monitoring data and any results of  
11 any tests or investigations conducted by EPA in any way  
12 pertaining to the Atlas/Coalinga Superfund Site (NPL No. 239).

13 XI. RECORD PRESERVATION

14 EPA and SPLC agree that each shall preserve, during  
15 the pendency of this Consent Order and for a minimum of six (6)  
16 years after termination of this Consent Order, separate central  
17 depositories of the records and documents required to be  
18 prepared under the RI/FS Work Plan, as Amended. If EPA  
19 requests that some or all such documents be preserved for a  
20 longer period of time, SPLC shall either comply with that  
21 request or permit EPA to obtain or copy any such document prior  
22 to its destruction. SPLC shall notify EPA of the address(es)  
23 of the depository(ies) and shall provide access to EPA at all  
24 reasonable times. EPA shall provide SPLC with a prior written  
25 notice of its desire to inspect, obtain or copy any documents  
26 maintained in a depository pursuant to this Article. SPLC

1 shall provide EPA with access to documents identified in EPA's  
2 written notice within two weeks of SPLC's receipt thereof.

3 **XII. DISPUTE RESOLUTION**

4 If SPLC objects to any EPA decision pursuant to  
5 Articles VI, XIV and XVI, SPLC shall notify EPA in writing of  
6 its objections within fourteen (14) calendar days of receipt of  
7 the decision. EPA and SPLC then have an additional fourteen  
8 (14) calendar days from the receipt by EPA of the notification  
9 of objection to reach agreement. At the end of the fourteen  
10 (14) day discussion period, EPA shall provide a written  
11 statement of its decision, signed by the Regional Director of  
12 the Toxics and Waste Management Division, to SPLC. The  
13 imposition or amount of stipulated penalties is not subject to  
14 Dispute Resolution (Article XII). This dispute resolution  
15 provision or EPA's decision pursuant to this provision does not  
16 grant or imply jurisdiction to any court to review EPA's  
17 decisions pursuant to this Order. Use of the Dispute  
18 Resolution provision will not relieve SPLC's duty to complete  
19 the other tasks in a timely manner in accordance with the  
20 schedule.

21 **XIII. STIPULATED PENALTIES**

22 A. Except with respect to any extensions allowed by  
23 EPA in writing or excused by the provisions of Article XIV  
24 (Force Majeure), for each day in which SPLC fails to submit a  
25 report or document required to be submitted pursuant to this  
26 Consent Order, or in which SPLC otherwise fails to achieve the

1 requirements of this Order, SPLC agrees to pay into the  
2 Hazardous Substance Superfund the sums set forth below as  
3 stipulated penalties within 30 days of notice by EPA that  
4 stipulated penalties have been triggered. These penalties  
5 shall accrue commencing upon SPLC's receipt of the written  
6 determination of disapproval, as specified in Article VI, or  
7 upon the failure of SPLC to meet the schedule specified in  
8 Amendment I to the RI/FS Work Plan, as Amended, or upon written  
9 notice from EPA to SPLC that a violation of this Order has  
10 occurred. The imposition and amount of these penalties are not  
11 subject to Dispute Resolution (Article XII).

12 Penalties shall accrue during the 28-day dispute  
13 period under the provisions of Article XII (Dispute Resolution)  
14 but will not be demanded during this period. However, if SPLC  
15 does not prevail, SPLC agrees to pay and EPA has the right to  
16 collect all penalties which accrued prior to, during, and after  
17 the period of dispute.

18 B. Stipulated penalties shall accrue in accordance  
19 with paragraph XIII(A) above in the amount of:

20 up to \$5,000 per day for the first week of violation;  
21 up to \$7,500 per day for the second week of violation;  
22 up to \$10,000 per day for the third week of violation;  
23 up to \$12,500 per day for the fourth week of violation;  
24 and up to \$15,000 per day thereafter;

25 provided, however, stipulated penalties in accordance with  
26 Article XIII(A) above for Additional Work shall not exceed a

1 total of \$500,000. Stipulated penalties for work agreed to in  
2 the RI/FS Work Plan, as Amended, are not capped.

3 C. SPLC's payment of stipulated penalties will be  
4 payable upon demand by the Director, Toxics and Waste  
5 Management Division, U.S. EPA, Region 9, by check made payable  
6 to the United States Treasury addressed to:

7 U.S. Environmental Protection Agency  
8 Superfund Accounting  
9 P.O. Box 371003M  
Pittsburgh, PA 15251

10 SPLC shall send a notification of any penalty paid to  
11 the EPA Project Coordinator.

12 D. Any delay occasioned in whole or in part as a  
13 result of a prior delay for which SPLC is penalized and has  
14 paid a penalty shall not be subject to penalty.

15 XIV. FORCE MAJEURE

16 SPLC shall perform all the requirements of this  
17 Consent Order according to the time limits set out in the RI/FS  
18 Work Plan, as Amended, unless their performance is prevented or  
19 delayed by events which constitute a force majeure.

20 For the purposes of this Order, a force majeure is  
21 defined as any event arising from causes entirely beyond the  
22 control of SPLC. Economic hardship shall not be considered an  
23 event entirely beyond the control of SPLC and shall not trigger  
24 the force majeure clause. SPLC's inability to obtain access to  
25 property owned by others shall be considered a circumstance  
26 entirely beyond the control of SPLC if SPLC has complied with



Article IX. Delays encountered in securing any permit or other approval required by or in meeting or complying with substantive obligations or prohibitions imposed by any governmental agency with respect to any action to be conducted pursuant to this Consent Order are considered to be entirely beyond the control of SPLC if, after SPLC provides such agency with notice of the provisions of Section 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), SPLC uses its best efforts to obtain such permit or approval or to meet or comply with such substantive obligations or prohibitions.

SPLC has the burden of proving by clear and convincing evidence that any delay is or will be caused by events entirely beyond its control.

In the event of a force majeure, the time for performance of the activity delayed by the force majeure shall be extended for the time period of the delay attributable to the force majeure. The time for performance of any activity dependent on the delayed activity shall be similarly extended, except to the extent that the dependent activity can be implemented in a shorter time. EPA shall determine whether subsequent requirements are to be delayed and the time period granted for any delay. SPLC shall adopt all reasonable measures to avoid or minimize any delay caused by a force majeure.

In the event of a force majeure, SPLC shall notify EPA's project coordinator orally within 48 hours after SPLC

1 becomes aware of the occurrence of the force majeure and shall  
2 within fourteen (14) days of the oral notification, notify EPA  
3 in writing of the anticipated length and cause of the delay.  
4 The written notification shall also state the measures taken  
5 and/or to be taken to prevent or minimize the delay, and the  
6 time table by which SPLC intends to implement the delayed  
7 activity. Failure of SPLC to comply with the force majeure  
8 notice requirements will be deemed an automatic forfeiture of  
9 its right to request a delay; provided, however, that with  
10 respect to permits or approvals required or substantive  
11 obligations or prohibitions imposed by any governmental agency,  
12 so long as SPLC keeps EPA informed in a timely manner of all  
13 information received by SPLC from governmental agencies  
14 regarding such permits, approvals, obligations or prohibitions,  
15 SPLC will not be deemed to have forfeited SPLC's right to  
16 request a delay.

17 In the event that EPA and SPLC cannot agree that any  
18 delay in the achievement of the requirements of this Consent  
19 Order has been or will be caused by circumstances entirely  
20 beyond the control of SPLC, the dispute shall be resolved in  
21 accordance with the provisions of Article XII.

22 XV. RESERVATION OF RIGHTS

23 A. Notwithstanding compliance with the terms of this  
24 Consent Order, including the completion of an EPA approved  
25 Remedial Investigation and Feasibility Study, SPLC is not  
26 released from liability, if any, for any actions taken by EPA

respecting the Site. EPA reserves the right to take any enforcement action pursuant to CERCLA as amended and/or any other legal authority, including the right to seek injunctive relief, monetary penalties, and punitive damages for any violation of law or this Consent Order; provided, however, if SPLC pays the full amount of stipulated penalties demanded by EPA for any particular instance of noncompliance with this Order, SPLC shall not be required to pay other monetary penalties, including punitive damages, for that particular instance of noncompliance. EPA will not use the provisions of this Order against SPLC in any proceeding other than one to enforce this Order.

B. Nothing in this Consent Order or any document attached hereto shall constitute an admission by SPLC of any fact or legal matter or determination set forth herein. By signing this Consent Order, SPLC does not admit, accept or acknowledge and specifically denies any liability or fault with respect to: (1) the conditions at or arising from the Site, (2) any matter arising out of or relating, directly or indirectly, to the conditions at or arising from the Site, or (3) any response costs which have been or may have been incurred by any person. Any payments made pursuant to Article XVI shall not constitute evidence of an admission by SPLC of any liability to EPA or to any other person or agency for reimbursement of any cost associated with the Site or with any issues or matters related to the Site.

C. By signing this Order, subject to Section 113(h) of CERCLA, 42 U.S.C. § 9613(h), SPLC reserves and does not waive, any rights, claims or defenses, including without limitation any rights or claims against EPA, any other governmental agency, or any third party, relating in any way to the Site, any rights to seek reimbursement under Section 106(b)(2) of CERCLA, 42 U.S.C. § 9606(b)(2), for work performed pursuant to Article VI or Article XII, or for costs paid pursuant to Article XVI, or to contest any payments made pursuant to Article XVI, or any defenses that SPLC might have raised or may in the future raise to this Order, that SPLC might raise to any action of or determination by EPA pursuant to this Order, or that SPLC might raise in any other proceeding brought by EPA, the California Regional Water Quality Control Board ("CRWQB"), the California Department of Health Services ("DOHS"), or any other governmental agency or person, except that SPLC specifically waives any right it might have to contest EPA jurisdiction for entry and enforcement of this Consent Order.

D. EPA expressly reserves all rights and defenses that it may have, including EPA's right both to disapprove of work performed by SPLC and to request that SPLC perform Additional Work in addition to those detailed in the RI/FS Work Plan, as Amended, as provided in this Consent order. EPA reserves the right to undertake removal actions and/or remedial

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1 actions at any time. EPA reserves the right to seek  
2 reimbursement from SPLC for such costs incurred by the United  
3 States.

4 XVI. REIMBURSEMENT OF COSTS

5 A. Within 30 days of the effective date of this  
6 Consent Order, SPLC shall pay ten thousand dollars (\$10,000) to  
7 EPA in partial reimbursement of past response and oversight  
8 costs incurred by EPA in connection with the Site.  
9 Notwithstanding Article XV of this Consent Order, SPLC waives  
10 any rights it may have under applicable law to seek  
11 reimbursement from EPA for amounts paid pursuant to this  
12 paragraph. Such agreement shall not be construed as a waiver  
13 of any rights SPLC may have to seek reimbursement from EPA for  
14 any amounts paid to EPA other than pursuant to this paragraph,  
15 including without limitation any amounts paid pursuant to  
16 Paragraph (B) of this Article or any other provision of this  
17 Consent Order, nor shall it be construed as a waiver of any  
18 rights SPLC may have to seek reimbursement from any other  
19 person or entity for amounts paid to EPA pursuant to this  
20 paragraph or any other provision of this Consent Order.

21 B. Within 120 days of the effective date of this  
22 Consent Order, EPA will submit to SPLC a detailed accounting of  
23 all response and oversight costs incurred by EPA associated  
24 with the Site to the effective date of the Consent Order. SPLC  
25 agrees to reimburse EPA for the amount of such costs. Such  
26 amount, less the amount paid by SPLC pursuant to Paragraph (A)

1 of this Article, shall be paid to EPA in four equal  
2 installments, due within 2 months, 5 months, 8 months and  
3 11 months, respectively, after receipt of such accounting. In  
4 addition, at the end of each year, EPA shall submit to SPLC an  
5 accounting of all response and oversight costs incurred by EPA  
6 during that year with respect to this Consent Order. SPLC  
7 shall reimburse EPA for the amount of such costs in three equal  
8 installments, due within 2 months, 5 months, and 8 months,  
9 respectively, after receipt of such accounting.

10 C. Any payments made pursuant to this Article shall  
11 be by check made payable to the Hazardous Substance Response  
12 Trust Fund. SPLC may contest the amount of any accounting  
13 under this Article, except the amount paid pursuant to  
14 Paragraph (A), pursuant to Article XII (Dispute Resolution).  
15 Checks should specifically reference the identity of the Site  
16 and be addressed to:

17 U.S. Environmental Protection Agency  
18 Superfund Accounting  
19 P.O. Box 371003M  
Pittsburgh, PA 15251  
Attention: Collection Officer for Superfund

20 A copy of the transmittal letter shall be sent to the EPA  
21 Project Coordinator.

22 D. EPA reserves the right to bring an action against  
23 SPLC pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, for  
24 recovery of all response and oversight costs incurred by EPA  
25 related to this Consent Order and not reimbursed by SPLC, as  
26 well as any other unreimbursed past and future costs incurred

1 by EPA in connection with response activities conducted  
2 pursuant to CERCLA at the Site.

3 XVII. OTHER CLAIMS

4 Nothing in this Consent Order shall constitute or be  
5 construed as a release from any claim, cause of action or  
6 demand in law or equity against any person, firm, partnership,  
7 or corporation not a signatory to the Consent Order for any  
8 liability it may have arising out of or relating in any way to  
9 the generation, storage, treatment, handling, transportation,  
10 release, or disposal of any hazardous substances, hazardous  
11 wastes, pollutants, or contaminants found at, taken to, or  
12 taken from the Site.

13 XVIII. OTHER APPLICABLE LAWS

14 All actions required to be taken pursuant to this  
15 Consent Order shall be undertaken in accordance with the  
16 requirements of all applicable local, state, and federal laws  
17 and regulations unless an exemption from such requirements is  
18 specifically provided in this Consent Order or unless SPLC  
19 obtains an exemption from the appropriate authority.

20 XIX. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

21 A. SPLC shall indemnify and hold harmless the United  
22 States Government, its agencies, departments, agents,  
23 contractors, and employees ("United States Government"), except  
24 for the United States Department of the Interior, Bureau of  
25 Land Management, its agencies, departments, agents,  
26 contractors, and employees, from and against any and all

1 losses, judgments, fines, settlements and other obligations  
2 ("Obligations") incurred in connection with any demand, claim  
3 or proceeding against the United States Government to the  
4 extent and in the proportion such Obligations are proximately  
5 caused by the acts or omissions of SPLC, its officers,  
6 employees, receivers, trustees, agents, or assigns ("SPLC") in  
7 carrying out the activities pursuant to this Consent Order.  
8 EPA is not a party in any contract involving SPLC at the Site.

9 B. SPLC shall bear no responsibility and shall have  
10 no liability for any loss, injuries or damages ("Damages")  
11 suffered or incurred by any person to the extent and in the  
12 proportion such Damages are proximately caused by the actions  
13 or conduct at the Site by the United States Government, its  
14 agencies, departments, agents, contractors, or employees.

15 C. The party receiving the indemnity (Indemnified  
16 Party) (The United States Government) under Paragraph (A)  
17 above, shall promptly give notice to the party providing  
18 indemnity (Indemnifying Party) (SPLC) of the receipt of any  
19 demand, claim or proceeding giving rise to an indemnification  
20 obligation under Paragraph (A). With respect to any such  
21 demand, claim or proceeding as to which the United States  
22 Government notifies SPLC, SPLC shall be entitled to assume the  
23 defense of such demand, claim or proceeding with counsel  
24 satisfactory to the United States Government. The United  
25 States Government shall have the right to participate in the  
26 defense of such demand, claim or proceeding with its own



1 counsel at its own expense. SPLC shall not be liable to  
2 indemnify the United States Government for any amounts paid in  
3 settlement of any demand, claim or proceeding effected without  
4 SPLC's written consent. Neither SPLC nor the United States  
5 Government shall unreasonably withhold its consent to any  
6 proposed settlement.

7 XX. COMMUNITY RELATIONS/PUBLIC COMMENT

8 EPA will implement a Community Relations Program in  
9 accordance with Agency policies and guidance documents. SPLC  
10 may participate in community relations activities when agreed  
11 to by SPLC and deemed appropriate by EPA.

12 XXI. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

13 In consideration of the communications between SPLC  
14 and EPA prior to the issuance of this Consent Order concerning  
15 its terms, SPLC agrees that there is no need for a settlement  
16 conference prior to the effective date of this Consent Order.  
17 Therefore, the effective date of this Consent Order shall be  
18 the date on which it is signed by EPA.

19 This Consent Order may be amended solely by mutual  
20 agreement of SPLC and EPA. Such amendments shall be in writing  
21 and shall have as the effective date that date on which such  
22 amendments are signed by all signatories and notice thereof is  
23 provided to each signatory pursuant to Article VI(D).

24 No informal advice, guidance, suggestions, or comments  
25 by EPA regarding reports, plans, specification, schedules, and  
26 any other writing submitted by SPLC will be construed as

1 relieving SPLC of its obligation to obtain such formal approval  
2 as may be required by this Consent Order.

3 The attached RI/FS Work Plan, as Amended, is agreed to  
4 be subject to public comment received during the official  
5 public comment period following the signing of the Order. EPA  
6 may make changes to the RI/FS Work Plan, as Amended, based on  
7 the public comment. If SPLC does not agree to incorporate  
8 those changes in the RI/FS Work Plan, as Amended, EPA reserves  
9 the right to withdraw its consent and take any action it deems  
10 proper, including conducting the RI/FS itself.

11 XXII. PARTIES BOUND

12 This Consent Order shall apply to and be binding upon  
13 SPLC and EPA, their agents, successors, and assignees.

14 No change in ownership or corporate or partnership  
15 status relating to the Site will in any way alter the status of  
16 SPLC or in any way alter SPLC's responsibility under this  
17 Consent Order. SPLC will be responsible, and will remain  
18 responsible, for carrying out all activities required of it  
19 under this Consent Order.

20 SPLC shall provide a copy of this Consent Order to all  
21 contractors, sub-contractors, laboratories, and consultants  
22 retained to conduct any portion of the work performed pursuant  
23 to this Consent Order within 14 calendar days of the effective  
24 date of this Consent Order or date of such retention.

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XXIII. NOTICE TO THE STATE

EPA has notified the State of California pursuant to the requirements of Section 106(a) of CERCLA 42 U.S.C. § 9606(a).

XXIV. TERMINATION AND SATISFACTION

The provisions of the Consent Order shall be deemed satisfied upon SPLC's receipt of written notice from EPA that SPLC has demonstrated, to the satisfaction of EPA, that all of the terms of this Consent Order, including any additional tasks which EPA has determined to be necessary pursuant to Article VI(E) (Additional Work), have been completed. EPA will not unreasonably withhold the giving of such notice.

IT IS SO AGREED AND ORDERED:

SOUTHERN PACIFIC LAND COMPANY

By W. William Ehri  
W. William Ehri  
Vice President,  
Property Management  
Services

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 9

By Jeff A. Jackson  
Jeff A. Jackson  
Acting Director,  
Toxics & Waste Management  
Division

Jon K. Wactor  
Jon K. Wactor  
Assistant Regional Counsel  
United States Environmental  
Protection Agency, Region 9

Date: 11-16-87Date: 11-16-87